

No. 21-16278

OPINION filed April 17, 2023 - Before: O’SANNLAIN, Senior Circuit Judge, BUMATAY, Circuit Judge, and BAKER, Judge, U.S. Court of International Trade.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

CALIFORNIA RESTAURANT ASSOCIATION,
Plaintiff-Appellant,

v.

CITY OF BERKELEY,
Defendant-Appellee.

**UNOPPOSED MOTION OF CITY OF BERKELEY FOR A 30-DAY
EXTENSION OF TIME TO FILE PETITION FOR REHEARING EN BANC**

On April 17, 2023, the Court issued its decision holding that the City of Berkeley’s Ordinance No. 7,672-N.S (“Prohibition of Natural Gas Infrastructure in New Buildings”) is preempted by the federal Energy Policy and Conservation Act, 42 U.S.C. § 6297(c). Absent an extension, any petition for rehearing en banc would be due on May 1, 2023. By this unopposed motion, the City of Berkeley respectfully seeks an extension of 30 days — to and including May 31, 2023 —to file any such petition.

As explained in the accompanying declaration of Sean H. Donahue, following the Court’s decision, the City of Berkeley retained the law firm Donahue

& Goldberg, LLP to serve as its lead counsel in connection with rehearing and other potential further review. The requested extension is required for new counsel to familiarize themselves with the case and to ensure that any petition is based upon a properly thorough review of the record and of the relevant law. In addition, the City of Berkeley requires the requested time in order to complete necessary consultations within and outside of the city government concerning the Court's decision and the contemplated en banc petition.

Counsel for Appellants have stated that they do not oppose this motion. The City of Berkeley has not previously requested any extension of this deadline.

Accordingly, movant respectfully requests an extension of time to May 31, 2023, in which to file a petition for rehearing en banc.

Respectfully submitted,

/s/

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Certificate of Compliance

I hereby certify that the foregoing motion is in proportionally spaced 14-point Times New Roman font and that it contains 412 words, in compliance with the type-volume limitations of Fed. R. App. P. 27(d)(2).

/s/ Sean H. Donahue

Certificate of Service

I hereby certify that on this 20th day of April 2023, I filed a copy of the foregoing motion via the Court's CM/ECF system, which will provide copies to all registered counsel.

/s/ Sean H. Donahue